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FEDERAL ELECTION COMMISSION

Before the  
**FEDERAL ELECTION COMMISSION** SEP 12 AM 10: 23

In the matter of:  
  
Price for Congress

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**CELA**  
MUR No. 7260

**RESPONSE OF PRICE FOR CONGRESS TO COMPLAINT OF CAMPAIGN LEGAL CENTER, DEMOCRACY 21, AND CATHERINE HINCKLEY KELLEY**

This Response issues on behalf of Price for Congress ("PFC" or the "Committee") and Mr. Paul Kilgore, in his official capacity as Treasurer of PFC, in regard to the complaint (the "Complaint") filed with the Federal Election Commission ("FEC" or the "Commission") by the Campaign Legal Center (CLC), Democracy 21, and Catherine Hinckley Kelley (collectively the "Complainants") in mid-July 2017. As discussed in substantial detail herein, the Complaint filed by CLC, Democracy 21 and Ms. Kelley is based upon both misguided legal conclusions and erroneous factual assumptions regarding the nature of PFC's disbursement to America Rising Corp., which was perfectly legal and permissible under the Federal Election Campaign Act ("FECA"), 52 U.S.C. § 30101, *et seq.* and its associated regulations. The Complaint, like many filed by the Complainants with the Commission in recent years, is nothing more than a thinly-veiled partisan attack designed to create negative headlines about the current Secretary of the U.S. Department of Health and Human Services ("HHS"), increase the public-relations profile of the Complainants, and generate a media narrative that can be used for future fundraising by CLC and Democracy 21. Given that the allegations set forth in the Complaint have no cognizable basis in either law or fact, PFC hereby requests that the FEC refrain from initiating any further

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review or investigation into this matter and immediately dismiss the instant Complaint as it relates to the Committee and Mr. Kilgore.

**I. Introduction**

Respondent PFC is the principal federal campaign committee of Dr. Thomas E. Price (hereinafter "Dr. Price"), former Republican Member of the United States House of Representatives for Georgia's Sixth Congressional District. Dr. Price was a Member of Congress until February 2017, when he resigned from office to assume his new position as HHS Secretary. The two primary Complainants in this matter are, unsurprisingly, two left-leaning "watchdog" organizations that spend the majority of their time and resources targeting Republican officials across federal government with meritless complaints designed to distract from their public policy goals and harm their political standing. Since the advent of the Trump Administration, these particular Complainants have become even more emboldened and active in filings meritless complaints against Republicans with the FEC and other regulatory bodies.

On November, 29, 2016, President-Elect Donald Trump announced his intention to nominate Dr. Price to serve as a member of the Cabinet as HHS Secretary. On January 18 and 24, 2017, the Senate Committee on Health, Education, Labor and Pensions and the Senate Committee on Finance held confirmation hearings to consider Dr. Price's nomination. A few weeks following the completion of these hearings - on February 10, 2017 to be exact - the U.S. Senate confirmed Dr. Price's nomination as HHS Secretary and he concurrently resigned as a Member of Congress. In the period of time following the announcement of President Trump's intention to nominate Dr. Price as HHS Secretary, media coverage was particularly negative and ruthlessly personal, with an immense amount of coverage centering on decisions Dr. Price made as a Member of Congress, including specific actions he took as former Chair of the Budget

Committee for the U.S. House of Representatives, matters related to his compliance with the Stop Trading on Congressional Knowledge Act (STOCK) Act, and other items bearing on his responsibilities as a federal officeholder. As permitted by federal campaign finance laws, PFC enlisted the services of a media research company, America Rising Corp.<sup>1</sup>, to monitor what was being said about Dr. Price in various media sources. The goal of such monitoring, which is extremely common among federal campaign committees, was to inform PFC staff decision making in responding to erroneous narratives about Dr. Price's congressional record and securing his political standing in Georgia's Sixth Congressional District in the event he was not confirmed. It is PFC's payment to America Rising Corp., which is evidenced by the campaign check for "research services" dated January 26, 2017 (attached hereto as "Exhibit A"), that is the crux of the instant Complaint.

As set forth in the language of the Complaint, PFC's disbursement to America Rising Corp. allegedly violated federal election law because it constituted a conversion of campaign funds to "personal use" by Dr. Price, who purportedly paid the identified vendor to help him "land his next job." (Complaint, p. 1). The Complainants rely on two rather circumstantial and uncorroborated sources of evidence to support such an allegation: 1) a quote from an article that ran in the liberal website *Slate* in July of 2017<sup>2</sup>; and 2) a number of videos and blog posts that America Rising Squared<sup>3</sup> (AR<sup>2</sup>), a wholly and distinct entity from America Rising Corp., published on its website about Dr. Price. (Complaint, p. 3). In the *Slate* article at issue, author

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<sup>1</sup> America Rising Corp. was formerly known as America Rising LLC. The LLC converted to a C-corporation on January 1, 2017.

<sup>2</sup> David Freedlander, *Confirmation, Inc.*, *Slate* (July 3, 2017), [http://www.slate.com/articles/news\\_and\\_politics/politics/2017/07/trump\\_s\\_cabinet\\_nominees\\_were\\_so\\_toxic\\_they\\_needed\\_outside\\_help\\_from\\_america.html](http://www.slate.com/articles/news_and_politics/politics/2017/07/trump_s_cabinet_nominees_were_so_toxic_they_needed_outside_help_from_america.html); <http://arsquared.org/?s=tom+price>.

<sup>3</sup> America Rising Squared is a nonprofit, social welfare entity organized under Section 501(c)(4) of the Internal Revenue Code.

David Freedlander opined that the head of AR<sup>2</sup>, Brian Rogers, noted his organization "was necessary for [Price and other cabinet nominees] since they faced a wall of obstruction from the Democratic Party." (Complaint, p. 3).<sup>4</sup> The videos and blog posts that are referenced appear to have been published by AR<sup>2</sup> to highlight certain attacks on Dr. Price's record in Congress and certain issues discussed during his Senate confirmation hearings.

The Complaint presupposes that PFC's payment to America Rising Corp. could not have been made for any other purpose than to engage "America Rising ... in opposition research and grassroots lobbying activities to promote Price's confirmation and influence the Senators voting on Price's confirmation to post-Congressional employment." (Complaint, p. 5). Additionally, Complainants repeatedly conflate two legally independent entities, America Rising Corp. and AR<sup>2</sup>, as if they are one and the same. As even a cursory review of the corporate records show, they are wholly separate and distinct entities. Despite the vivid imagination of Complainants, a legally permissible payment from PFC to America Rising Corp. for media research services is simply not a payment to AR<sup>2</sup> for the development of opposition research, promotional videos, or grassroots lobbying activities. PFC made no such payments to AR<sup>2</sup> and never engaged AR<sup>2</sup> to conduct any of the mythical activities described in the Complaint. As America Rising Corp. Chief Financial Officer Scott Cotter confirms in the attached affidavit (*see* "Exhibit B"), PFC's payment was made solely to America Rising Corp. for research services and bore no connection to any activities conducted by AR<sup>2</sup>. There is simply no truth to the claims made by Complainants and no evidence offered by them that would justify the dedication of any FEC investigative resources. The assertions at issue in the present matter, as evidenced by the lack of

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<sup>4</sup> The Commission should take note that the parenthetical referencing Dr. Price within this citation is not contained in the referenced *Slate* article and was added by Complainants in the text of the Complaint to bolster their frivolous allegations. The FEC should also take note that the "quote" that is attributed to Mr. Rogers is not actually a quote at all, but rather the language of the article's author - a commentator and reporter for liberal website *Slate*.

substantiation in the Complaint and the extent of media self-promotion undertaken by Complainants when filing with the Commission<sup>5</sup>, are just another example of CLC and Democracy 21 attempting to use the FEC complaint process as a political tool against Republicans.

As demonstrated below, the claim advanced by Complainants is unsupported by both fact and law. At no point did PFC use campaign funds to pay America Rising Corp. to develop opposition research, videos or grassroots lobbying activities in support of the confirmation of Dr. Price as HHS Secretary. Rather, PFC permissibly used campaign funds to pay America Rising Corp. for the provision of media research services designed to help campaign staff monitor media narratives about Dr. Price's congressional record and actions as an officeholder in order to strategically plan for communications messaging in the event that his confirmation was not successful. The use of campaign funds to pay for research services of this type is wholly permissible under FECA and relevant advisory opinions from the Commission. Consequently, there is no rational basis for initiating any further investigation into PFC's disbursement to America Rising Corp., nor is there any reason to conclude that Respondents have in any way violated applicable campaign finance law, rules or regulations.

## **II. Argument**

The Complainants allege that Price for Congress violated 52 U.S.C. § 30114(b)(1) and 11 C.F.R. § 113.2(f)(5)<sup>6</sup> by converting committee funds to personal use through its engagement

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<sup>5</sup> See July 7, 2017 Democracy 21 and CLC Press Release, "CLC, D21 Complaint: Tom Price Violated Law By Using Campaign Funds To Secure HHS Confirmation" published on both organizations' websites: <http://www.democracy21.org/homepage/clc-d21-complaint-tom-price-violated-law-by-using-campaign-funds-to-secure-hhs-confirmation/>; <http://www.campaignlegalcenter.org/news/press-releases/clc-d21-complaint-tom-price-violated-law-using-campaign-funds-secure-hhs>. This press release also spurred follow-on news coverage in a variety of media outlets, including *The Atlanta Journal Constitution*, *The Hill*, and *The Wall Street Journal*

<sup>6</sup> The Code of Federal Regulations citation is incorrect. Presumably, Complainants meant to cite to 11 CFR § 113.1(g)(1).

with America Rising Corp. (Complaint, p. 5). As is demonstrated below, a payment by a Member of Congress's campaign committee to a vendor for media research services does not constitute a "conversion" of campaign funds to "personal use".

52 U.S.C. § 30114(b)(1) states in relevant part that:

(1) *In general.* A contribution or donation ... shall not be converted by any person to personal use.

(2) *Conversion.* For purposes of paragraph (1), a contribution or donation shall be considered to be converted to personal use if the contribution or amount is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign or individual's duties as a holder of Federal office, including--

- (A) a home mortgage, rent, or utility payment;
- (B) a clothing purchase;
- (C) a noncampaign-related automobile expense;
- (D) a country club membership;
- (E) a vacation or other noncampaign-related trip;
- (F) a household food item;
- (G) a tuition payment;
- (H) admission to a sporting event, concert, theater, or other form of entertainment not associated with an election campaign; and
- (I) dues, fees, and other payments to a health club or recreational facility.

11 C.F.R. § 113.1(g)(1) defines "personal use" as "any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder." The term "Federal officeholder" is defined as an individual elected to or serving in the office of President or Vice President, or a Senator or Representative in Congress. *Id.* § 113.1(c).

Dr. Price was clearly a Federal officeholder as defined by FEC regulations at the time of his committee's January 26, 2017 payment to America Rising Corp. The Complainants allege that the payment to America Rising Corp. constituted a conversion

of campaign funds to personal use because the payment was not related to Dr. Price's 2018 campaign for his re-election to the House of Representatives nor to his duties as a Federal officeholder. (Complaint, p. 5). Instead, Complainants contend, the "payments"<sup>7</sup> appear related only to Price's confirmation hearings for his desired role as HHS Secretary, meaning the payments were for expenses that existed irrespective of his campaign or his duties of a Member of Congress." (Complaint, p. 5-6). The only evidence that Complainants can point to for this allegation is that AR<sup>2</sup> began promoting research and videos supporting Price's confirmation as Secretary of Health and Human Services around the same time as the payment, and because Brian Rogers was "quoted" in *Slate* as saying that AR<sup>2</sup> was necessary to overcome the Democrat's wall of obstruction against President Trump's cabinet nominees. (Complaint, pg. 3). Such factual assumptions and innuendo could not be further from the truth. Nevertheless, Respondents will endeavor to address the Complaint's allegations below in order to highlight its erroneous suppositions and interpretation of federal campaign finance law. Based upon the facts and arguments set forth herein, it should be clear to the Commission that PFC is in full compliance with applicable law, and that the assertions made by the Complainants are wholly without merit.

As a threshold matter, Complainants are incorrect in their fundamental assumption about the payment from PFC to America Rising Corp. The payment was not, as the Complainants allege, to pay for AR<sup>2</sup> services focused on the promotion of Dr. Price's confirmation as HHS Secretary. The payment was made to America Rising Corp. for research services related to the

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<sup>7</sup> It is unclear what other payments to America Rising Corp. the Complainants are referencing since PFC made only one payment to the company for research services. It is likely that this is either a typo on the part of the Complainants or yet another example of the factual inaccuracy of the allegations levied in the Complaint.

monitoring of media and press coverage.<sup>8</sup> Scott Cotter, America Rising Corp.'s CFO, confirmed this in his affidavit.<sup>9</sup> While Complainants point out that America Rising Corp. and AR<sup>2</sup> have the same address and will engage in joint projects on occasion, the contents of the Complaint provide no evidence that establishes that such a joint project existed in the instant setting. Nor does the Complaint offer a single scintilla of evidence establishing that PFC's payment to America Rising Corp. bears any connection to the promotional videos that AR<sup>2</sup> posted on its website or any "grassroots lobbying activities" that the 501(c)(4) organization purportedly engaged in on behalf of Dr. Price (to the extent such activities even occurred). The reason for these evidentiary failures is simple - the actual truth bears no relation to the Complainant's wild accusations. PFC did not pay American Rising Corp. and AR<sup>2</sup> for any sort of joint project in support of Dr. Price's nomination as HHS Secretary, nor did PFC disburse funds to AR<sup>2</sup> for the development of videos, opposition research or advocacy pieces. To suggest otherwise is pure fantasy.

From a legal perspective, Complainants' allegations regarding PFC's disbursement to America Rising Corp. are also wholly off base. PFC's use of campaign funds for the procurement of media research services is not personal use by Dr. Price, but rather a common permissible use under federal campaign finance law. FECA and its associated rules and regulations give campaigns wide discretion in making expenditures in support of electoral and officeholder activity.<sup>10</sup> To this end, an expenditure will generally not be considered personal use so long as a candidate or officeholder "can reasonably show that the expenses at issue resulted

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<sup>8</sup> See Exhibit A, referenced earlier.

<sup>9</sup> See Exhibit B, referenced earlier.

<sup>10</sup> See FEC Advisory Opinion 1997-12, at 4.

from campaign or officeholder activities."<sup>11</sup> When analyzing a claim that a particular campaign expenditure has been converted to personal use, the FEC first determines whether the use qualifies as a *per se* personal in light of the language of 52 U.S.C. § 30114(b)(1), *supra*.<sup>12</sup> If an expenditure is not *per se* personal use, the utilization of campaign funds is instead examined on a case-by-case basis under what is known as the "irrespective test" - examining whether the expenditure fulfills a commitment, obligation or expense of the committee that would exist *irrespective of the candidate's campaign or duties as a Federal officeholder*.<sup>13</sup> The use of campaign funds for media research services does not qualify as a *per se* personal use based upon the language of 52 U.S.C. § 30114(b)(1). As such, the determination of whether it constitutes personal use is made on a case-by-case basis under the irrespective test.

The Commission has, on numerous occasions, made clear that the use of campaign funds for expenses related to media research, monitoring media narratives, and responding to press narratives (both related and unrelated to campaign activities and the duties of an officeholder) passes the irrespective test.<sup>14</sup> In permitting the use of campaign funds for monitoring and responding to media matters, the FEC has noted that "the activities of candidates and officeholders may receive heightened scrutiny and attention because of their status as candidates and officeholders."<sup>15</sup> Since the attendant need to monitor and respond to press coverage *would not exist* irrespective of the candidate's campaign or officeholder status, expenses related to monitoring and researching press issues, as well as formulating and preparing responses to media

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<sup>11</sup> Explanation and Justification for Final Rules on Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 FR 7862, 7867 (Feb. 9, 1995).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> See FEC Advisory Opinions 2008-07 (Vitter), 2006-35 (Kolbe), 2001-09 (Kerrey), 1998-01 (Hilliard), 1997-12 (Costello), and 1996-24 (Cooley).

<sup>15</sup> See FEC Advisory Opinion 1997-12, at 5.

narratives associated with campaign and officeholder matters are considered permissible uses of campaign funds.<sup>16</sup> In this setting, the Commission has approved the use of campaign funds for a variety of services related to media research and response activities, including: 1) the review of daily press clippings; 2) the drafting and revision of press releases; 3) the provision of political advice on media matters; 4) the independent investigation of factual allegations concerning media narratives; 5) the funding of legal and factual research on media items; and 6) the formulation of responses to press inquiries, among other conduct.<sup>17</sup> In this same vein, the FEC and its staff have also gone so far as to expressly categorize certain types of payments in this area as "examples of adequate purposes" for campaign expenditures - an implicit recognition of the permissibility of such expenditures by candidate committees.<sup>18</sup> Payments or disbursements for "media", "research", "research services", "media consulting", and "research consulting" are all expressly denoted by the Commission as adequate purposes for campaign expenditures, and thus inherently permissible under applicable law. The general recognition of media-related costs as allowable disbursements by candidate committees can also be found in the manner in which the Commission determines the percentage of legal expenses that are acceptable in various factual settings related to media matters. This formula asserts that "... (1) any legal expense that relates directly and exclusively to dealing with the press, such as preparing a press release, appearing at a press conference, or meeting or talking with reporters qualifies for 100% payment with campaign fund. . . ."<sup>19</sup>

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<sup>16</sup> Id.

<sup>17</sup> See FEC Advisory Opinions 1996-24, 1998-01, 2001-09.

<sup>18</sup> See "Examples of Adequate Purposes" derived from the Commission's Statement of Policy of January 9, 2007.

<sup>19</sup> Id.

Based upon the FEC's broad approval of media-related spending as discussed above, it is readily apparent that payments to a media research company for the provision of press monitoring and research assistance on matters related to a candidate's congressional record and officeholder status is a permissible use of campaign funds by a candidate committee. At the time of the disbursement at issue in this matter, Dr. Price was a Member of Congress who, although nominated for a cabinet post, was not guaranteed to be confirmed and was facing intense media scrutiny of his congressional record, work as House Budget Committee Chair, and adherence to the requirements of the STOCK Act. All of this coverage, although published at a time when Dr. Price was under consideration for confirmation as HHS Secretary, directly related to his position and voting record as a Member of Congress, directly impacted his political standing in Georgia's Sixth Congressional District and his ability to pursue potential re-election in 2018, and (in the case of the STOCK Act) touched on alleged liability under a statute that only applied to Dr. Price by virtue of his existing position in Congress. In light of these facts, PFC was well within the bounds of applicable law to expend campaign funds for the payment of a media research firm for research services related to the monitoring of press coverage touching on the congressional record, political standing and potential STOCK Act liability of Dr. Price. To argue otherwise would be a serious departure from applicable FEC precedent and rejection of standard campaign practices undertaken by candidate committees at the federal level.

**III. Conclusion**

As the information contained within this Response clearly sets forth, Respondent has done nothing to run afoul of the legal requirements of the Act, Commission regulations, or relevant FEC advisory opinions. To the contrary, it is quite apparent that PFC has acted in full compliance with federal campaign finance law. Despite this fact, however, Complainants have

seen fit to make unsubstantiated allegations and present ineffectual "evidence" against PFC, presumably for the purpose of political advantage and harassment. As a result of these actions and the meritless nature of Complainants' claims, the Commission should summarily dismiss the Complaint against PFC and Mr. Kilgore, and find that there is no reason to believe that the Committee violated the Act or its associated rules and regulations.

Respectfully Submitted,



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*Designated Counsel to Price for Congress and Mr.  
Paul Kilgore in his official capacity as Treasurer of  
Price for Congress.*







*Before the*  
**FEDERAL ELECTION COMMISSION**

In the matter of:  
  
Price for Congress

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MUR No. 7260

**DECLARATION OF SCOTT COTTER**

I, Scott Cotter, make the following statement to the Federal Election Commission ("FEC" or "Commission") in connection with the above-referenced matter:

1. I am the Chief Financial Officer ("CFO") for America Rising Corp., a media research and communications firm located at 1500 Wilson Blvd., 5<sup>th</sup> Floor, Arlington, VA 22209. I have worked at America Rising Corp. since January 1, 2017 and have been in my current position since January 1, 2017. Based upon my position at America Rising Corp., I have personal knowledge of the facts stated herein.
2. America Rising Corp., formerly known as America Rising LLC, is a for-profit business entity that converted from a limited liability company to a C-corporation on January 1, 2017. America Rising Corp. is a wholly distinct and independent entity from America Rising Squared (AR<sup>2</sup>). America Rising Corp. sells research and communications services to political and issue advocacy organizations. Its business includes selling media research services to campaign committees. All such services provided by America Rising Corp. are completely independent and legally separate from the operational activities of AR<sup>2</sup>.
3. In late January 2017, America Rising Corp. received a check (#2715) in the amount of \$40,000 from Price for Congress as payment for the performance of research services undertaken by America Rising Corp. The check (attached as "Exhibit A" to the Response filed by Price for Congress) was dated January 26, 2017 and accurately marked in the memo line as payment for research services by America Rising Corp.
4. The funds provided by Price for Congress through Check #2715 went only to America Rising Corp. as compensation for the research services denoted on the identified check. Such funds were deposited into the bank account of America Rising Corp. upon processing of the check by Chain Bridge Bank.
5. None of the funds provided by Price for Congress through Check #2715 went to AR<sup>2</sup>.

6. Price for Congress's payment of \$40,000 went in full to America Rising Corp. for research services, and there was no direct or indirect pass through of any of these funds to AR<sup>2</sup> for any purpose.

7. America Rising Corp. sells its research services separately and independently of AR<sup>2</sup>, and did not accept payment from Price for Congress to facilitate any activities undertaken by AR<sup>2</sup> or any other organization.

I declare under the penalty of perjury that the foregoing is true and correct.

  
\_\_\_\_\_  
Scott Cotter

9/11/17  
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Date